

declined to withdraw the remaining 11 declarations from their preliminary injunction submission, and also declined to list the declarants as witnesses.

The declarations of non-disclosed witnesses filed by Texas, *et al.* are:

1. Richard Allgeyer, Director of the Texas Health and Human Services Commission's Center for Strategic Decision Support, testified that there are harms to Texas associated with providing health services and benefits to undocumented immigrants. Dkt. No. 6 at 332.
2. Lisa Dawn-Fisher, Associate Commissioner for School Finance/Chief School Finance Officer at TEA, testified that there are harms to Texas associated with providing education to undocumented immigrants. Dkt. No. 6 at 362.
3. David G. Baker, as Deputy Director of Law Enforcement Operations at the Texas Department of Public Safety, testified that there are harms to Texas law enforcement associated with increased immigration to Texas purportedly caused by increasing the number of deferred action recipients. Dkt. No. 6 at 358.
4. Joe Peters, Assistant Director of Texas DPS Driver License Division, testified that there are harms to Texas associated with issuing more driver's licenses to an increased population of noncitizens who are authorized to receive a driver's license. Dkt. No. 6 at 414.
5. Karl Eschbach, Professor and Director of Population Research at the University of Texas Medical Branch in Galveston, Texas, testified that policies like DACA and DAPA would increase the unauthorized immigrant population in Texas and that there are harms to Texas associated with low rates of private market health insurance coverage for unauthorized immigrants. Dkt. No. 6 at 369.
6. Finis Welch, Professor Emeritus of Economics at Texas A&M University and University

of California, Los Angeles, and the President of Welch Consulting, a economics and statistics consulting firm, testified that there are harms to Texas associated with a purported financial incentive to hire undocumented individuals over U.S. citizens, and those harms will increase if DAPA and Expanded DACA are implemented, and the pool of undocumented individuals authorized to work grows. Dkt. No. 6 at 482.

7. Sheri Pollock, Deputy Chief Legal Counsel of the Wisconsin Department of Workforce Development, testified that there are harms to Wisconsin associated with an increased number of deferred action recipients receiving unemployment benefits from the Wisconsin Department of Workforce Development. Dkt. No. 6 at 420.
8. Donald M. Snemis, Indiana Bureau of Motor Vehicles Commissioner, testified that increasing the number of deferred action recipients could cost Indiana approximately \$4.4 million for driver's license and state ID processing and fraud investigation. Dkt. No. 6 at 474.
9. Kevin D. Bailey, an attorney for the Wisconsin Department of Health Services, testified that Wisconsin would be harmed by deferred action recipients' anticipated use of state funds for emergency medical conditions. Dkt. No. 6 at 355.
10. Patrick A. Fernan, an agent of the Wisconsin Department of Transportation, testified that Wisconsin would be harmed by costs associated with providing driver's licenses, state IDs, and conducting investigations related to increasing the number of recipients of deferred action. Dkt. No. 6 at 391.
11. Jeffrey M. Gill, General Counsel and Deputy Commissioner for the Indiana Department of Workforce Development, testified that there are harms to Indiana associated with providing unemployment benefits to individuals with deferred action. Dkt. No. 6 at 402.

When Plaintiffs declined to identify these declarants as witnesses, and further declined to withdraw the non-disclosed witness declarations, Defendant Intervenors identified responsive declarations and listed them as preliminary injunction exhibits. Thus, just as Plaintiffs filed declarations from the DAPA case as exhibits to their current preliminary injunction motion, Defendant Intervenors listed as exhibits the declarations of witnesses that were part of the record in the DAPA case and related DACA cases.

If Defendant Intervenors' exhibits are inadmissible as declarations of non-disclosed witnesses, then Plaintiffs' similar exhibits are also inadmissible for the same reason.

Plaintiffs' attempts to distinguish their exhibits from the similar exhibits of Defendant Intervenors are unavailing. Plaintiffs characterize the inclusion of their own declarations as simply the introduction of "portions of one exhibit." *See* Motion, Dkt. No. 105 at 2. However, that "one exhibit" totaled more than 800 pages in length and constituted the entire Joint Appendix of the DAPA case – declarations included. *See* Dkt. 6.

Plaintiffs further claim that they "are not relying on those specific calculations" in the declarations of non-witnesses that they filed with the Court in support of their preliminary injunction motion. Dkt. 105 at 6. However, when a party files evidence with the Court in support of a preliminary injunction motion, the party necessarily relies on that evidence. Despite Plaintiffs' assertions, the fact remains that Plaintiffs' declarations are filed with the Court, they are part of the evidentiary record, and any party can rely on them. Defendant Intervenors should be afforded the opportunity to respond to Plaintiffs' exhibits with their own exhibits or all the declarations of non-disclosed witnesses by Plaintiffs and Defendant Intervenors should be excluded.

Allowing Plaintiffs to file declarations from the DAPA litigation, while excluding Defendant Intervenor's responsive declarations, would severely prejudice Defendant Intervenor. The DAPA Joint Appendix, which Texas, *et al.* filed with the Court in this case at Dkt. 6, did not contain any evidence submitted by the DAPA Defendant Intervenor because they did not enter the case until after the Court's order granting a preliminary injunction was on appeal. Therefore, permitting Plaintiffs in this case to "roll in" the evidence from the DAPA Joint Appendix provides the Court with: *all* the evidence chosen by Plaintiffs in that case; evidence chosen by the United States; and no evidence provided by or chosen by Defendant Intervenor.

Plaintiffs provide neither legal authority nor equities to support their Motion to Exclude. Although the parties have worked well through this 30-day discovery period, exchanged evidence and taken over 25 depositions, they have been unable to resolve the issue of declarations filed by Plaintiffs as exhibits (without disclosing the declarants as witnesses) and Defendant Intervenor's similar identification of exhibits in response.

Therefore, Defendant-Intervenor respectfully request that the Court exclude Plaintiffs' declarations of undisclosed witnesses at Dkt. 6 at 332–36, 355–403, 414–21, 474–91. In the alternative, if the Court denies this Motion, Defendant Intervenor respectfully request that the Court deny Plaintiffs' Motion to Exclude.

Dated: June 28, 2018

Respectfully submitted,

**MEXICAN AMERICAN LEGAL
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the 28th day of June, 2018, I electronically filed the above and foregoing document using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Nina Perales
Nina Perales

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

| | | |
|---|--------------------|------------------------|
| STATE OF TEXAS, <i>et al.</i> , |) | |
| |) | |
| | <i>Plaintiffs,</i> |) |
| |) | |
| <i>v.</i> |) | Case No. 1:18-cv-00068 |
| |) | |
| UNITED STATES OF AMERICA, <i>et al.</i> , |) | |
| |) | |
| | <i>Defendants,</i> |) |
| |) | |
| <i>and</i> |) | |
| |) | |
| KARLA PEREZ, <i>et al.</i> , |) | |
| |) | |
| <u>Defendant-Intervenors.</u> |) | |

PLAINTIFF STATES' WITNESS LIST

TO: Defendant-Intervenors, by and through their attorney of record, Nina Perales, Mexican American Legal Defense and Educational Fund, 110 Broadway, Suite 300, San Antonio, Texas 78205, nperales@maldef.org.

Plaintiff States serve this witness list in accordance with the parties' letter agreement.

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Texas Education Agency
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The substance of Mr. Lopez's testimony is found in his declaration already filed with the Court. *See* ECF No. 7 at App. 0876–0879.

2. Monica Smoot
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The substance of Ms. Smoot's testimony is found in her declaration already filed with the Court. *See* ECF No. 7 at App. 0881–0885.

3. Kenneth Palinkas
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The substance of Mr. Palinkas's testimony is found in his declaration already filed with the Court. *See* ECF No. 7 at App. 1007–1009.

Respectfully submitted.

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I certify that on June 8, 2018, I served a copy of this document by electronic mail to all counsel listed below:

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